Detroit Paneling Systems, Inc., a wholly owned subsidiary of ERB Lumber, Inc. *and* Michigan Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL–CIO. Case 7–CA–39842

April 10, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On March 19, 1998, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs and the General Counsel and Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified and set forth in full below.[3]

1. Contrary to our dissenting colleague, we agree with the judge's finding that the Respondent unlawfully discharged employee Cedrick Greenhill.

There is no doubt that the Respondent had knowledge of Greenhill's union sympathies. The judge found that on May 16, 1997, during a discussion between Foreman Casey Treadaway and several employees, Greenhill challenged Treadaway's antiunion message, and asked why it so upset him that the employees wanted the Union and were standing up for what they felt was right. In the course of this discussion, Treadaway unlawfully threatened that union supporters would be fired for no reason.

On the next working day, May 19, Treadaway discharged Greenhill. (The judge aptly observed that the "timing in this scenario leaves little to the imagination.") At about noon, Treadaway told Greenhill that he was no longer needed and to go home. Because it was lunchtime, Greenhill went to the lunchroom to join his coworkers. Later, Treadaway came into the lunchroom and terminated Greenhill for insubordination and poor work. The alleged insubordination was Greenhill's failure to leave the premises when directed to do so.

Given the Respondent's knowledge of Greenhill's union activity, the Respondent's expressed hostility toward unionization, and the proximity in time between Greenhill's union activity and his discharge, we agree with the judge that the General Counsel made a strong showing that the discharge was unlawfully motivated. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Furthermore, we do not agree with our dissenting colleague that the Respondent demonstrated it would have discharged Greenhill absent his union activity.

The Respondent gave Greenhill two reasons for his discharge: poor work and insubordination. The judge, however, discredited the claim that Greenhill was a poor worker, finding instead that he had in fact been praised for the quality of his work. The advancing of a false reason for the discharge suggests that "there is another motive [for the action that the Respondent] wishes to conceal." *Cell Agricultural Mfg. Co*., 311 NLRB 1228 fn. 3 (1993), enfd. in relevant part 41 F.3d 389 (8th Cir. 1994).

Turning to the second reason (insubordination), the credited testimony shows that Treadaway, for unexplained reasons,[4] told Greenhill to stop work and to go home. Greenhill left his post and went to the lunchroom. Later, Treadaway came into the lunchroom and discharged Greenhill.

By stopping in the lunchroom, Greenhill may have failed to follow the literal terms of Treadaway's order to "stop work and go home." The question presented is whether Greenhill's alleged misconduct was the real reason for his discharge or just a convenient pretext that the Respondent seized on to rid itself of a union adherent.

"While it is a truism that management makes management decisions, not the Board, . . . it remains the Board's role, subject to our deferential review, to determine whether management's proffered reasons were its actual ones." *Uniroyal Technology Corp. v. NLRB*, 151 F.3d 666, 670 (7th Cir. 1998). And, in making that determination, it is surely appropriate to consider the insubstantial nature of the alleged misconduct. See *Neptune Water Meter Co. v. NLRB*, 551 F.2d 568, 570 (4th Cir. 1977) ("The rule is that if the employee has behaved badly it won't help him to adhere to the Union, and his employer's anti-union animus is not of controlling importance. But if the employee is a good worker and his breach of the work rules trivial, the more rational explanation for discharge may be invidious motivation.").

Here, it is claimed that Greenhill, an employee with a good work record, was terminated because he joined his coworkers in the lunchroom at lunchtime after being told

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In adopting the judge's finding that Plant Manager Tim Oliver unlawfully interrogated employee Edward Musser, we emphasize that the record shows that Oliver told Musser that Vice President Rick Kramer directed Oliver to ask if Musser was a card carrying union member.

[3] We modify the recommended Order to comply with the Board's decision in *Indian Hills Care Center*, 321 NLRB 144 (1996), as modified by *Excel Container*, 325 NLRB 17 (1997).

[4] The judge discredited Treadaway's version of events, including his explanation for why he removed Greenhill from the production line.

that he was no longer needed and to go home. Greenhill had not been discharged at the time he was told to go home, and the Respondent has not advanced any legitimate business reason for not permitting him to sit in the lunchroom with his fellow employees.

To the extent that Greenhill may have engaged in misconduct, it was so trivial and insubstantial, and the Respondent's severe punishment of discharge so extreme, as to raise the strong inference of retaliatory motive.[5] Therefore, we find, in agreement with the judge, that the Respondent's assertion of insubordination was pretextual. *KNTV*, 319 NLRB 447, 452 (1995).[6] In our view, the Respondent seized upon a trivial offense to discriminate against a union activist and "send a message" to other employees who supported the Union.[7]

2. We agree with the judge's finding that the Respondent unlawfully discharged Edward Musser.

On April 18, 1997, Musser submitted an employment application to the Respondent. The Respondent hired him on May 5, 1997. The Respondent discharged him on May 19, 1997, allegedly because he "falsified" his employment application by stating that he had been employed by Century Truss Company from June 1986 until April 1997, when, in fact, he only actively worked there until July 1996.

On May 16, 1997, the day after the meeting at which Musser's expression of prounion statements upset Vice President Kramer, Human Resource Manager Debbie Demick discovered certain "discrepancies" in Musser's application. When she called Century Truss, she was informed that Musser had not worked actively for Century Truss since July 19, 1996, when he went on personal leave status.

When Musser arrived for work on May 19, 1997, Plant Manager Oliver called him to his office, where Demick was waiting. When Demick confronted him with the Century Truss "discrepancy," Musser explained that he was on leave of absence from Century Truss, that he could return at any time, and that he could provide the Respondent with a letter to that effect. This letter shows that Century Truss granted Musser a leave of absence from July 19, 1996, to July 25, 1997. The Respondent discharged him without seeking to verify his explanation.

In agreement with the judge, we find that the General Counsel has established that Musser's union activity was a motivating factor in the Respondent's decision to discharge him. *Wright Line*, supra. Thus, as discussed above, the record shows that the Respondent clearly had knowledge of Musser's union activity. In addition, the Respondent exhibited strong antiunion animus, as evidenced by the several violations of Section 8(a)(1) it committed. Further, Musser's discharge occurred just 4 days after he revealed his prounion sentiments at the employee meeting.

Therefore, under *Wright Line*, the burden shifted to the Respondent to demonstrate that it would have discharged Musser even in the absence of his union activity. For the following reasons, we find that the Respondent did not satisfy its burden.

First, the record does not support the claim that Musser's application was false. The Respondent's form asks applicants to "[a]ccount for all periods of time both employed and unemployed beginning with present or latest Employer." It is settled that "an employee on leave of absence generally continues to be regarded as an employee unless overt action or objective evidence that the employment relationship has been severed can establish it." *Pullman Inc. v. NLRB*, 379 F.2d 419, 423 (5th Cir. 1967), cited with approval in *Air Liquide America Corp.,* 324 NLRB 661, 663 (1997). Here, there is no evidence that Musser's employment relationship with Century Truss had been "severed" at the time he applied for employment with the Respondent. On the contrary, he was eligible to return to work at Century Truss until July 25, 1997. Therefore, as an employee on an approved leave of absence, Musser was in fact "employed" by Century Truss during the dates he indicated on his employment application, and there was no "falsification." The judge correctly recognized this key fact when he stated that "[t]echnically, Musser was not actively working for that Company but he was still considered an employee."

Second, the Respondent essentially ignored Musser's explanation and summarily rejected his offer to provide a letter from Century Truss verifying his leave of absence. This suggests that the Respondent had little interest in ascertaining the true facts and instead was attempting to find a plausible pretext to discharge him.[8] See *Sioux*

[5] See, e.g., *NLRB v. Mini-Togs, Inc.,* 980 F.2d 1027, 1036 (5th Cir. 1993); *Neptune Water Meter Co.,* supra, 551 F.2d at 570; *NLRB v. Cousins Associates, Inc.*, 283 F.2d 242, 243 (2d Cir. 1960).

[6] In adopting the judge's finding that the Respondent unlawfully discharged Greenhill, we find it unnecessary to rely on his comment that Greenhill's alleged insubordination "does not strike me as a good reason for which an employee should be fired." It is well established that "[t]he [B]oard cannot substitute its judgment for that of the employer" and decide what constitutes appropriate discipline. *Corriveau & Routhier Cement Block v. NLRB*, 410 F.2d 347, 350 (1st Cir. 1969), citing *NLRB v. Ogle Protection Service,* 375 F.2d 497, 505 (6th Cir. 1967), cert. denied 389 U.S. 843 (1967). Our unfair labor practice finding is not based on the ground that the reasons the Respondent advanced for discharging Greenhill were not "good" ones. Rather, as discussed above, we are finding that the reasons the Respondent proffered were not its actual ones.

[7] See *NLRB v. Eastern Massachusetts Street Railway Co.*, 235 F.2d 700, 709–710 (1st Cir.1955), cert. denied 352 U.S. 951 (1956) (employer's right to discipline for cause cannot be used as a "cloak" to protect an employer which is using minor insubordination of an employee to justify a discharge for the purpose of intimidating or coercing other employees' protected activities).

[8] Further, as to the Respondent's assertion that it had also previously discharged other employees for falsification of records, the Respondent has not shown that these falsifications were comparable to the "falsification of records, the Respondent has not shown that these falsifications were comparable to the "falsification" involved herein.

Products, Inc. v. NLRB, 684 F.2d 1251, 1258–1259 (7th Cir. 1982).

Third, the record shows that the Respondent reviewed Musser's application just one day after he "shook up" Vice President Kramer at the employee meeting and was unlawfully interrogated by Plant Manager Oliver. Although Demick attempted to explain her tardy examination of Musser's application by claiming that she was "behind in her work," the judge implicitly discredited her testimony and found that the "timing already suggests that the Respondent's decision to review the application was a pretext to discharge Musser, who had been regarded as a good employee."

In short, given our view that there was no falsification, we conclude that the Respondent seized the pretext it was searching for and summarily discharged Musser, thereby following through on the threats it made to discharge union supporters. Accordingly, for all these reasons, we adopt the judge's finding that the Respondent has failed to show it would have discharged Musser absent his union activity.[9]

ORDER

The National Labor Relations Board orders that the Respondent, Detroit Paneling Systems, Inc., a wholly owned subsidiary of ERB Lumber, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating any employee about union support or union activities.

(b) Threatening employees with plant closure, plant relocation, and discharge because of the employees' union support.

(c) Discharging or otherwise discriminating against any employee for supporting Michigan Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL–CIO or any other labor organization.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Cedric Greenhill and Edward Musser full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Cedric Greenhill and Edward Musser whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Detroit, Michigan facility copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 15, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

MEMBER HURTGEN, dissenting in part.

I would reverse the judge's finding that the Respondent unlawfully discharged employee Cedrick Greenhill in violation of Section 8(a)(3). The evidence establishes that Supervisor Casey Treadaway told Greenhill he was no longer needed and ordered him to leave the building and to go home. There is no allegation or finding that these actions were unlawful. After receiving this direct order, Greenhill sat in the plant's lunchroom and did not leave the Respondent's premises. The supervisor thereupon handed Greenhill a note terminating him for insubordination (refusal to leave the premises) and poor work.

The administrative law judge, in ostensibly applying the Board's *Wright Line*[1] analysis, found that the General

[9] *Idle Wild Farm,* 254 NLRB 691, 694 (1981) (employer lawfully discharged employee, where unlike instant case employee admitted falsifying employment application and circumstances did not justify finding that falsification was a pretext to cover antiunion motivation).

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] 251 NLRB 1083, 1089 (1982), enfd 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

Counsel had met his burden of proving that Greenhill's union activity was a motivating factor in his subsequent discharge. The judge also rejected the Respondent's defense that it would have discharged Greenhill even in the absence of any union considerations. The judge noted that the Respondent had previously assured Greenhill that he was a good worker. Moreover, in the judge's view, Greenhill's alleged insubordination of sitting in the lunchroom, after being ordered home, did not "strike [the judge] as a good reason for which an employee should be fired."

As an initial matter, I believe the judge should have confined himself to determining whether the Respondent's action in discharging Greenhill was motivated by animus against Greenhill's prior union activity.[2] He should not have colored his conclusions by his personal view as to whether the incident merited discharge. More importantly, as noted above, there was no assertion here that Treadaway's order (that Greenhill go home) was itself unlawful. In my view, Greenhill's disobeying a lawful order by his supervisor was the reason for the Respondent's action. Thus, even assuming arguendo that the General Counsel established a prima facie case, the Respondent has overcome that prima facie case. *GHR Energy Corp.,* 294 NLRB 1011, 1012–1014 (1989). As stated in *Domsey Trading Corp*., 310 NLRB 777, 789 (1993):

> Employees are entitled to be union activists, and they are protected by the Act for their union activity. However, the Act does not insulate them when they are insubordinate.

The majority does not quarrel with the proposition that Greenhill "failed to follow the literal terms of Treadaway's order. . . ." However, my colleagues argue that the disobedience of the order was not the real reason for the discharge. In this regard, my colleagues say that Greenhill's stopping in the lunchroom and talking to employees there, (instead of leaving), was not substantial misconduct. However, in my view, it is not the Board's function to determine degrees of disobedience. The Respondent gave a lawful order to Greenhill, and my colleagues do not quarrel with the proposition that Greenhill failed to follow the literal terms of that order. Accordingly, the Respondent satisfied its rebuttal burden under *Wright Line*.[3]

[2] While ostensibly disavowing the judge's subjective analysis of the relative merits of Greenhill's insubordination, the majority goes on to term this misconduct as "trivial" and "insubstantial." I would leave this evaluation to the employer, in the absence of disparate treatment or persuasive independent evidence of pretext. In any case, I view disobedience of a supervisor's order to leave the premises as a significant act of insubordination clearly justifying discharge.

[3] The fact that another *Wright Line* defense (poor work) was not established is not a basis for rejecting the primary *Wright Line* defense (insubordination).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT threaten you with plant closure, plant relocation, and discharge because of your union activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Michigan Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL–CIO or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Cedric Greenhill and Edward Musser full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Cedric Greenhill and Edward Musser whole for any loss of earnings and other benefits resulting from our discharge of them, less any net earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Cedric Greenhill and Edward Musser, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

DETROIT PANELING SYSTEMS, INC., A WHOLLY OWNED SUBSIDIARY OF ERB LUMBER, INC.

John Ferrer, Esq., for the General Counsel.
John P. Hancock Jr., Esq., of Detroit, Michigan, for the Respondent.
Nicholas R. Nahat, Esq. (Novara, Tesija, Michel, P.C.), of Southfield, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried before me in Detroit, Michigan, on November 5, 1997, upon a complaint dated July 31, 1997, charging the Respondent, Detroit Paneling Systems, Inc. (the Respondent) with violations of Section 8(a)(1) and (3) of the National Labor Relations Act. The charge was filed by the Michigan Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL–CIO (the Union), on May 20, 1997, as amended on May 27 and July 28, 1997. The allegations charge the Respondent with independent violations of Section 8(a)(1) by (1) demanding that employees not meet with or designate the Union as their representative, (2) interrogating employees about the Union, and (3) by threatening employees with plant closure, plant relocation, and their replacement by nonunion employees. The 8(a)(3) and (1) allegations state that the Respondent discharged two employees, Ed Musser and Cedric Greenhill, because of their union activities.

The Respondent's answer admits the jurisdictional allegations in the complaint, including the supervisory hierarchy consisting of Rick Kramer, vice president of ERB Lumber, Inc., Debbie Demick, human relations manager of ERB Lumber, Inc., Tim Oliver, plant manager of Detroit Paneling Systems, Inc., and Casey Treadaway, foreman. Respondent admits that the two employees were discharged but it denies that the discharges were union related and that it committed the independent 8(a)(1) allegations.

On the basis of the record as a whole, my observation of the demeanor of the witnesses, and the briefs filed by the General Counsel, the Charging Party, and the Respondent, I make the following

FINDING OF FACT

I. JURISDICTION

Detroit Paneling Systems, Inc., a wholly owned subsidiary of ERB Lumber, Inc., is located at 1401 Rosa Parks Boulevard, Detroit, Michigan. In the conduct of its business, i.e., the manufacture, sale, and distribution of building wall panels, the Company had gross revenues in excess of $500,000 with purchases of goods and their shipments in excess of $50,000 coming from outside the State of Michigan. The Respondent is admittedly an employer within the meaning of Section 2(2), (6), and (7) of the Act.

The Charging Party Union is admittedly a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND

Detroit Paneling System, Inc. (DPS) as a subsidiary of ERB Lumber employed more than 40 employees at its facility located in Detroit. Among its employees were Cedric Greenhill who submitted his application on March 14, 1991, and was hired as a laborer in April 1997. Edward Musser was hired as a laborer on May 5, 1997. He had submitted his application on April 18, 1997, and was interviewed by Manager Tim Oliver.

On May 12, 1997, the Union made its attempt to organize the employees. The Union's organizer, Pat Raquepaw, passed out handbills outside the gate in front of the Respondent's facility. The union literature included a notice of a union meeting to be held on May 15, 1997.

On the same day, May 15, 1997, the Respondent held an employee meeting in reaction to the union campaign. Vice president of ERB Lumber, Richard Kramer, discussed the Union and unequivocally expressed the Company's opposition to the Union. An overhead projector beamed the Company's agenda on the wall, commencing with paragraphs 1–3 as follows (R. Exh. 10):

> 1. We have reason to believe that the union may attempt to organize our location.
>
> Union authorization cards. Don't sign.
>
> 2. We at Erb do not believe in labor unions. Our policy is to communicate strictly with you. The union drives a wedge between the associate and the company and causes us all to lose focus on our customer.
>
> 3. With over 3600 associates, only 11 are unionized.

During his testimony, Kramer admitted that the purpose of the meeting was "to make sure that the employees did not think that we condone unionism" (Tr. 266). He also admitted that he encouraged the employees not to sign union cards. He told the assembled employees that if contacted by the Union, "I guess we'd just encourage you not to talk to them. We don't think you have a reason or need to talk to them" (GC Exh. 13). Kramer spoke at length about the employee benefits, comparing them in a more favorable light than the union benefits.

Employee Musser interrupted Kramer's speech and disputed for example the Company's claims that the Union does not have a benefit package. Musser testified as follows (Tr. 150):

> I raised my hand and I said, well, I came from a Union shop, and we did have those benefits. If you were off for eight days, on the eighth day, you would get $200 per week.

After the meeting, Kramer approached Musser and asked for his name, where he had worked, and where he came from. Musser identified himself and spelled his name for Kramer and he told Kramer about his prior employment. Shortly thereafter Plant Manager Oliver also spoke to Musser. Oliver said that Musser "shook up Rick Kramer" and inquired whether Musser "was still a card holding member of the Union" (Tr. 77).[1] Musser answered, "Yes." Oliver spoke to Musser again in the office, praised his work, and indicated that he might be considered for a raise and a better job assignment.

The Union held its meeting that day. It was attended by 7 to 10 employees. Musser and Greenhill signed union authorization cards (GC Exhs. 5, 7).

On the following day May 16, Casey Treadaway, the foreman, had a discussion with several employees about the Union during the afternoon break. At one point, after Musser had indicated his union sympathy, Treadaway responded in a rambling speech, filled with invective and street language, that the Company would move to Brighton or elsewhere and work on a nonunion basis for $5 an hour if the employees selected the Union. Treadaway in a high-pitched, excited manner threatened that union supporters were going to get fired for no reason, that the plant would shut down, locate elsewhere, and hire people willing to work for less wages. Treadaway's remarks were recorded on a tape player. Although he initially denied making these threats, he admitted that the recorded remarks were his.

[1] Based on his demeanor, I did not credit Oliver's denial of the conversation. Oliver's testimony appeared well rehearsed and insincere.

Shortly after these episodes on May 19, 1997, the Respondent discharged Musser and Greenhill.

According to the Respondent, the two employees were discharged for cause, Greenhill for insubordination and Musser for falsification of his employment application. Both justifications are tenuous and suspect. The employees were regarded as good employees. In Musser's case, the Respondent showed that Musser had failed to disclose his union background on his application and in Greenhill's case, the insubordination was his failure to leave the plant after he was told to "go home."

III. UNFAIR LABOR PRACTICES

The complaint alleges that on May 15, 1997, Kramer demanded that employees not meet with union representatives or designate the Union as their bargaining representative. Although an employer has a right to attempt to convince its employees that the Union is not in their best interest, Section 8(a)(1) of the Act prohibits an employer to interfere with the employees' Section 7 rights. That is, an employer may not order his employee not to engage in union activities. The record shows that Kramer spoke to the employees in order to dissuade them from joining the Union. In that conversation, he told the employees not to go down to the union meeting, and a message from a projector, stated, inter alia, "Union authorization cards. Don't sign."

The record shows that these messages appeared in the context of the Company's extended and lengthy discussion about the Union and the attempt to compare company benefits with the disadvantages of union membership. In this context, the Company's messages to the employees can be interpreted as suggestions rather than as demands. I therefore find that the employees were not actually ordered to dissociate themselves from the Union and that the Company's messages were not sufficiently coercive to interfere with the employees' Section 7 rights. I accordingly dismiss this allegation.

The next allegation of 8(a)(1) misconduct is supported by the record. Plant Manager Oliver coercively interrogated Musser when Oliver approached the employee after the antiunion meeting with the comment that he shook up Kramer. Oliver then asked whether Musser was still a card carrying union member. The brief encounter between a high company official and an employee immediately after the Company's strong antiunion message was coercive, particularly in connection with Oliver's remark that Musser's questions had disturbed Kramer. The question itself whether someone was a union member or not after the Company indicated its strong antipathy, is clearly coercive. I accordingly find an 8(a)(1) violation.

The alleged threats made by Supervisor Treadaway were well documented and clearly unlawful. In his long tirade of obscenities against the Union and union supporters he made it clear to the employees that the Company would relocate or close down or that it would discharge the employees if they selected the Union. Although Treadaway initially denied making the alleged threats, he agreed that he made the statements which were heard on the tape recording. I have no difficulty finding that the threats violated Section 8(a)(1) of the Act.

With respect to the discharges, the record shows that the General Counsel made out a prima facie case. The discharge of Greenhill was initiated by Treadaway. He testified that on May 19, he had received complaints from three other production line employees that Greenhill was working too slow. Treadaway ordered Greenhill to speed up the pace, but Greenhill replied to "fuck" that. Treadaway testified that he told Greenhill to go home and that Greenhill said that, "he wasn't going any goddammed where." Treadaway then decided to terminate Greenhill for his refusal to leave the premises.

Based on Treadaway's earlier testimony, where he contradicted himself after he was confronted by the tape, I have not credited his version of the events. Instead, I credit Greenhill who testified that he was regarded as a good worker who had never been reprimanded. On May 19, 1997, at around noon, Treadaway told him that he was no longer needed and to go home. Greenhill protested, demanding to know why Treadaway told him that he was no longer needed. Greenhill then proceeded to the lunchroom because he had missed going with his coworkers to lunch. As he sat in the lunchroom, Treadaway handed him a written note stating that he was discharged for insubordination and poor work (GC Exh. 10).

In agreement with the General Counsel and the Charging Party, I find that the reasons were pretextual. The Respondent was aware of Greenhill's union sympathy. During a discussion about the Union on May 16, 1997, between Treadaway and several employees Greenhill challenged the foreman's antiunion message. He said: "Why was he upset because we want the union. You know, we was standing up for what we felt was right for us" (Tr. 22). Unlike the other employees who mostly asked questions, Greenhill unequivocally revealed his prounion sentiment to management.

Three days after this incident the Respondent discharged Greenhill. The timing in this scenario leaves little to the imagination. On May 15, the Company held its antiunion employee meeting where the Company's vice president dissuaded the employees from pursuing the Union, on May 16, Greenhill revealed his union sympathies to Treadaway and challenged his antiunion stance. Treadaway had already threatened that union supporters would be discharged. It is apparent that the record supports a strong prima facie case of an 8(a)(3) violation, *Wright Line*, 251 NLRB 1083 (1980). The Respondent's justification that Greenhill would have been discharged even in the absence of any union consideration is not persuasive. In spite of a claim of "poor work," Greenhill had never received a written reprimand. Treadaway claimed that Greenhill had received oral reprimands, yet he could not remember specific instances. To the contrary, Greenhill received reassurances that he was a good worker. The alleged insubordination consisted of nor more than sitting in the lunchroom after he was told to go home. Such conduct does not strike me as a good reason for which an employee should be fired. Finally, Treadaway's testimony did not impress me as reliable, it was inconsistent and implausible.

Musser's discharge was also motivated by antiunion animus. Musser's union sympathies were well known to the Respondent. On May 15, 1997, he openly challenged management's antiunion campaign during the employee meeting. Immediately thereafter, Oliver interrogated him about his union membership and informed him that he had come to the attention of Kramer. Musser attended the union meeting later that day and signed a union card. The record clearly shows that the Respondent had full knowledge of Musser's union sympathy.

Initially, the Respondent may not have realized that Musser was a union organizer or "union salt" when he was employed on May 5, 1997. However, 1 day after the revelation of his union support, the Respondent examined his job application. Debbie Demick, human resource manager, testified that she

reviewed the application on May 16, 1997, after she had returned to work from a period of absence. She testified that she was behind in her work and discovered certain discrepancies which were then used to discharge Musser on May 19, 1997.

The timing already suggests that the Respondent's decision to review the application was a pretext to discharge Musser, who had been regarded as a good employee. The Respondent acted in line with the threats expressed for Treadway that the Respondent would discharge union supporters. I accordingly find that the General Counsel has made out a prima facie case of an 8(a)(3) and (1) violation.

The Company's reasons for Musser's discharge is not persuasive. The Company's handbook lists falsification of documents as an offense for which an employee could be disciplined "up to discharge" (R. Exh. 4). The falsification here consisted of Musser's representation on his employment application (GC Exh. 8) that his prior employment was with Century Truss (GC Exh. 9). In fact, Century Truss Company had agreed to place Musser on a leave of absence per letter of July 19, 1996 (R. Exh. 4). Technically, Musser was not actively working for that Company but he was still considered an employee. Indeed, during his earlier interview with Oliver concerning his job application, Musser had informed the Company that he was on vacation. In any case, during the meeting on May 19, 1997, when he was questioned by Demick and Oliver about his employment status, Musser explained the leave of absence and offered to have Century Truss verify the leave of absence. According to the Respondent, however, the explanation was not satisfactory.

In my view, the Respondent has failed to show that it would have discharged Musser even in the absence of his union activity. The alleged offense was at the most a minor error which did not affect Musser's work habits or his ability to perform his work. *Wright Line*, supra. I accordingly find that Musser's discharge violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. Detroit Paneling System, Inc., a subsidiary of ERB Lumber, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(2), (6), and (7) of the Act.
3. By coercively interrogating employees concerning their union activities the Respondent violated Section 8(a)(1) of the Act.
4. By threatening employees with plant closure, plant relocation and discharge, the Respondent violated Section 8(a)(1) of the Act.
5. By discharging its employees, Cedric Greenhill and Edward Musser, the Respondent violated Section 8(a)(3) and (1) of the Act.
6. The aforesaid unfair labor practices affect commerce within the meaning of the Section2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminatorily discharged Cedric Greenhill and Edward Musser, I shall recommend that the Respondent offer them immediate and full reinstatement to their former jobs or a substantially equivalent position without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them. All backpay provided shall be computed with interest on a quarterly basis in the manner prescribed by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and with interest computed in the manner and amount prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]